



North Carolina Department of Environment and Natural Resources

Michael F. Easley, Governor

William G. Ross Jr., Secretary

September 22, 2008

Ms. Renee Orr
Minerals Management Service (MMS-4010)
381 Elden Street
Herndon, Virginia 20170

Re: Comments on Preparation of 5-Year OCS Oil and Gas Leasing Program

Dear Ms. Orr:

I am writing in response to the Department of Interior's request for comments related to the preparation of a new 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program. I appreciate the opportunity to offer the following comments.

First, it is important to take a thoughtful and carefully considered approach to the potential significant expansion of OCS activities that may result from reopening of the 5-Year Plan. As we have noted many times in the past, the economic and environmental value of our oceans and coastal communities must be protected.

Second, I firmly believe that the role of the states in stewardship of important coastal resources, including energy resources that may exist in the OCS area, must be preserved and enhanced.

In this regard I am attaching the text of a letter that Governor Easley recently conveyed to members of the United States House and Senate. Governor Easley has called on Congress to empower North Carolina and other states to acquire OCS lease permits, without federal fees, to allow state control over these reserves as we transition to alternative fuels. This approach will make it more likely that American oil meets American needs.

As to the specific proposal to move up the date for a new oil and gas leasing program, North Carolina notes that federal agencies must also expedite review and approval of state coastal program changes so states have the ability to adequately review any leasing program. Currently the Office of Ocean and Coastal Resource Management in the United States Department of Commerce has a backlog of changes to North Carolina's approved coastal management plan awaiting review and approval. The changes awaiting review include both state development standards and land use plan provisions adopted by cities and counties in the coastal area. It is important that these standards and policies be available to the State in review of any offshore oil and gas leasing program. It would not

be reasonable to expedite a new leasing program without also expediting federal review of state policies to review such a program.

Previously North Carolina has submitted comments identifying critical issues for consideration during the development of any new OCS leasing program. I wanted to take the opportunity again to highlight these important issues to North Carolina. Below is a summary of the socio-economic, physical and marine issues unique to our coast. In addition, I have included an overview of some of the legal and policy issues that must be considered in the course of evaluating potential energy development in offshore waters of North Carolina.

Socio-economic

North Carolina remains committed to protecting our coastal and ocean resources as an integral part of North Carolina's economy, nature and culture. Our coastal areas support industries critical to our entire state's economy, including our fishing industry and tourism. North Carolina has more than 3,700 active commercial fishermen who make about 159,000 fishing trips per year. There are also over 750 licensed seafood dealers. The commercial fishing industry generates nearly 6,000 jobs and more than \$140 million for the state's economy. Recreational fishing is also very important economically and culturally in coastal North Carolina. North Carolina also has about 750,000 licensed recreational anglers, not including those fishing on ocean piers and charter boats or those under age 16. The Marine Recreational Statistics Survey estimates there are 1.9 million coastal anglers in North Carolina. Tourism in coastal North Carolina contributes \$2.6 billion-a-year as an industry and generates about 40,000 jobs. The value of these industries and the rich cultural heritage of our coastal areas demonstrate the immeasurable importance of protecting and sustaining the natural resources of our coast.

Physical Environment

North Carolina has approximately 320 miles of ocean beaches and shoreline and 614,400 acres of submerged land and oceanic waters within the three-mile Territorial Sea. Twenty-one barrier islands and two coastal peninsulas are separated by dynamic inlets and frame the state's estuaries. North Carolina's coastline is unique compared to other East Coast states. The convergence of the southward flowing coldwater Labrador Current and the northward flowing warmwater Gulf Stream, in conjunction with the Western Boundary Undercurrent, causes an upwelling of nutrient-rich waters over unique bathymetric features, enhancing the ocean's productivity off the North Carolina coast. Consequently, our state's coastal and ocean waters are filled with a particularly diverse and important mix of fish and other organisms at various stages of their lives.

Marine Environment

In addition to the economic value of the barrier islands and coastal area of North Carolina, there are other sites federally recognized for their natural and cultural resource value, including the Monitor National Marine Sanctuary, Cape Hatteras and Cape Lookout National Seashores, Albemarle-Pamlico National Estuary Program, N.C. National

Estuarine Research Reserve, as well as eight national wildlife refuges. Associated with many of these areas are a variety of endangered and threatened species including sea turtles, pelagic seabirds as well as marine mammals.

Fisheries for most of the fish species found in North Carolina's offshore waters are managed by the federal government (National Marine Fisheries Service – NMFS) under fishery management plans (FMPs) prepared by the South Atlantic and Mid-Atlantic Fishery Management Councils, as well as by NMFS. In support of these FMPs, the South Atlantic Fisheries Management Council, acting through NMFS, has designated several areas as Essential Fish Habitat (EFH). Several areas in North Carolina's offshore waters have been designated as Essential Fish Habitat and are also of particular relevance to OCS energy production; these include The Point, Ten Fathom Ledge, Big Rock and the sandy shoals of Cape Lookout, Cape Fear, and Cape Hatteras. These areas are important to migratory species such as king mackerel, Spanish mackerel, dolphin and cobia. Estuarine-dependent species such as black sea bass and gag also migrate from estuarine nurseries to the extensive hardbottom habitats associated with these EFH areas. Because of the importance of these species to the overall state economy, North Carolina will want to ensure that Essential Fish Habitat are protected from impacts associated with OCS energy production.

Legal and Policy Considerations Related to Potential OCS Development

The coastal resources of North Carolina are managed under the state's federally approved coastal management program. The applicable components of the N.C. Coastal Management Program for reviewing OCS activities for federal consistency include: goals set forth in the N.C. Coastal Management Act (N.C.G.S. 113A Article 7); administrative rules found in N.C.A.C. Title 15, Chapter 7; the enforceable policies of a number of State environmental protection and natural resource agencies; and the latest federally approved local land use plans for any coastal towns or counties where energy facilities might be sited.

As a state that has participated in the federal Coastal Zone Management Act (CZMA) program since 1974, we view the federal consistency provisions of the CZMA as vital to the federal-state partnership envisioned by Congress. In 1998, the N.C. Coastal Resources Commission (the rule making body for the N.C. Coastal Management Program) amended its coastal energy policies to provide greater protection to sensitive natural resources in the coastal zone. The rules identify specific sensitive areas (such as wildlife refuges, offshore reefs, hard bottoms, submerged aquatic vegetation beds, anadromous fish spawning and nursery areas and sea turtle nesting beaches) that should be avoided when locating energy facilities, require mitigation where impacts to coastal resources cannot be avoided, and restoration of sites when facilities are abandoned. Support facilities, drill ships and platforms are defined as "major energy facilities" and must, therefore, meet the siting requirements listed in the rule. The Commission also specifically identified the kind of information needed for consistency reviews of OCS proposals.

The N.C. Coastal Management Program also incorporates the enforceable policies of local land use plans. Some current land use plans express strong local government concern about the possible impacts of OCS activities on fishing and tourism. There is particular concern about land-based support facilities being incompatible with existing land use and the tourism-based economy. Enforceable policies incorporated into local land

use plans will need to be considered during a consistency determination of any OCS energy project.

In addition to those statutes outlining our state's coastal program, there are other state statutes that may impact review of proposed offshore energy development activities. Similar to the National Environmental Policy Act (NEPA), the North Carolina Environmental Policy Act (NCEPA), N.C.G.S. 113A Article 1, requires state agencies to report on state actions that involve an expenditure of public monies or use of public land and that may have significant effect upon natural resources, public health and safety, natural beauty, or historical or cultural resources of the state. Ocean activities within three miles of the coast are likely to invoke the reporting requirement in N.C.G.S. 113A-4. Reporting standards under the NCEPA are very similar to NEPA requirements. If a NEPA document is prepared for OCS activity, state comment on the NEPA document satisfies the reporting requirement under the NCEPA. There may be instances, however, in which the NCEPA requires preparation of an environmental document for an activity when NEPA does not. Under NCEPA, the state action agency must also reach an independent determination on the adequacy of the environmental document and the need for mitigation.

The state's Dredge and Fill Act, N.C.G.S. 113-229, regulates activities involving excavation or filling work in the estuarine waters (including waters of the Atlantic Ocean), tidelands and marshlands of the state. N.C.G.S. 143-215.1 authorizes regulation of activities affecting water quality. Pursuant to the statute, the state has developed water quality standards for both fresh and tidal waters and discharges are only allowed if they do not violate these standards. Any energy exploration or development that involves mining will be regulated under the Mining Act of 1971 (N.C.G.S. 74 Article 7).

My comments represent a broad overview of relevant issues specific to North Carolina that should be considered by MMS in this preplanning stage. We look forward to providing more detailed information as this process moves forward. Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script, reading "William G. Ross, Jr." followed by a diagonal slash.

William G. Ross, Jr.
Secretary

Attachment

cc: Governor Michael F. Easley
North Carolina congressional delegation
U.S. Office of Ocean and Coastal Resource Management